



Nebraska Sales and Use Tax
FOR CONSTRUCTION CONTRACTORS
Spring 2012

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www.revenue.ne.gov

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Today's Agenda

1. [Overview of Sales and Use Tax](#)
2. [Contractor Database](#)
3. [State Agency Information Sharing](#)
4. [Contractor Terms](#)
5. [Contractor Option Transactions](#)
6. [Contracts With Exempt Entities](#)
7. [Building Materials & Fixtures for a Job Site Outside Nebraska](#)
8. [Repair/Annexation of Exempt MME](#)

1.

Overview of Sales and Use Tax

1. Overview of Sales and Use Tax

- What is a **sales transaction**?
 - Sales tax is calculated on the **gross receipts**.
 - **Delivery location** determines the rate of local tax.
 - Retailers must **collect and report sales tax or document** why they didn't.

1. Sales Tax (continued)



Taxable Services

- Computer software training
- Pest control services
- Building cleaning
- Security services
- Detective services
- Motor vehicle towing, washing/waxing, painting
- Installing/applying tangible personal property
- Recreational vehicle (RV) park services
- Repair labor (with 4 exceptions)

For a complete list of taxable and nontaxable services, see the [Nebraska and Local Sales Tax Information Guide](#) on our website.

1. Use Tax (continued)



What is Use Tax?

- Use tax is due when Nebraska sales tax has not been paid on a taxable item or service purchased for use in Nebraska.
- Sales and use tax are **not BOTH due** on the same transaction.
- The big difference is **who** remits the tax -
 - **Sales tax** is collected and remitted by the **seller**.
 - **Use tax** is paid directly to the Department by the **purchaser/consumer**.

1. Overview of Sales & Use Tax (continued)



Use tax and sales tax have these things in common -

- They are imposed on the same transactions.
- They have the same exemptions.
- They are calculated at the same rate.
 - Where delivery occurs
 - OR
 - Where first usage in Nebraska takes place.

2.

Contractor Database

2. Contractor Database

- **EVERY** construction contractor making payment to a subcontractor must withhold 5%;...
- **UNLESS** the subcontractor is **REGISTERED** in the Department of Labor's Contractor Registration Database.

2. Contractor Database (continued)



- A single definition of “contractor” is used for purposes of the Contractor Registration Act and construction contractor withholding.
(This definition is slightly different than the sales and use tax definition of a contractor.)
- A centralized registration system is used for construction contractors.
- The Department of Labor administers the Contractor Database.

3.

State Agency Information Sharing

3. State Agency Info Sharing

Employee Classification Act [LB 563](#):

- Departments of Labor and Revenue.
- Labor will review whether workers are employees (Form W-2) or independent contractors (Form 1099).
- Revenue will review referrals from the Department of Labor.

LB 563 applies only to Construction Contractors and Delivery Companies.

4.

Contractor Terms

4. Contractor Terms

4A. Construction Contractor

4B. Contractor Labor

4C. Building Materials

4D. Fixtures

4E. Contractor Options

For more information on Contractors, see [Reg-1-017](#).

4A. Construction Contractor (Contractor)

- Makes repairs or improvements to real estate or items annexed to real estate.
- Arranges for annexation.

Examples you may not have thought about -

- Landscapers who build or repair retaining walls.
- Interior designers who arrange for construction work to be done (hanging wallpaper).
- Providers of restoration services to real estate.

4B. Contractor Labor



- Annexing building materials to real estate.
- Repair of a structure.
- Repair of building materials that are or will be annexed to real estate.
- Charges for contractor labor are not taxable.

Example: Hanging drywall.

4B. Contractor Labor (continued)



If you install telephone, cable, or satellite television,
OR perform work for a telephone, cable, or satellite company...
there are specific sales and use tax regulations governing the taxability of these projects.

4C. Building Materials

- Property (including fixtures) that will be annexed to real estate or to an improvement on real estate (see [Reg-1-017-02](#)).
- **DOES NOT INCLUDE:**
 - Tools;
 - Equipment;
 - Supplies; or
 - Other items not annexed.

Example: Rebar embedded in concrete is a building material. Form lumber is not.

4D. Fixtures



- Equipment that must be annexed to a building or structure so that it can properly function.
- Fixtures remain identifiable as a separate item.

Example: Water heater.

4E. Contractor Options

- Contractor Options apply only to **Construction Contractor Projects.**
- Option chosen determines:
 - How sales and use tax is paid on building materials and fixtures; or
 - If sales tax is collected from the customer on building materials and fixtures
- Audits will be conducted based on the default Option or Option chosen. If an Option is not chosen, default = Option 1.

5.

Contractor Option Transactions

5. Contractor Option Transactions

- **Retail Sales (TPP & Taxable Services)**
Taxable at rate in effect where delivery occurs
- **Contractor Labor**
Not taxable
- **Nontaxable Services**

Option 1 Contractor

➤ Transactions with the Supplier

- Purchases building materials and fixtures for resale.
- Must give Nebraska supplier a properly completed [Form 13](#), Section C, Block 1.

➤ Transactions with the Customer

- Does not collect sales tax on separately stated labor charges.
- Must collect sales tax on separately stated charges for building materials and fixtures.
- If charges for building materials and labor are not separately stated, the entire amount is taxable.

Option 2 Contractor

➤ Transactions with the Supplier

- Pays sales or use tax on purchases of building materials and fixtures.

➤ Transactions with the Customer

- Does **NOT** collect sales tax on any portion of the invoice. Cannot accept a Form 13.

Option 3 Contractor


➤ Transactions with the Supplier

- Purchases building materials and fixtures tax-free.
- Must give Nebraska supplier a properly completed [Form 13](#), Section C, Block 1.

➤ Transactions with the Customer

- Must remit use tax at the rate in effect at the time and place of withdrawal of building materials and fixtures from inventory.
- Does **NOT** collect sales tax on any portion of the invoice. Cannot accept a Form 13.

Form 13, Section C, Block 1

 Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption <small>• Read instructions on reverse side/see note below</small>		FORM 13	
NAME AND MAILING ADDRESS OF PURCHASER		NAME AND MAILING ADDRESS OF SELLER	
Name _____		Name _____	
Street or Other Mailing Address _____		Street or Other Mailing Address _____	
City _____	State _____ Zip Code _____	City _____	State _____ Zip Code _____
Check Type of Certificate <input type="checkbox"/> Single Purchase <input type="checkbox"/> Blanket If blanket is checked, this certificate is valid until revoked in writing by the purchaser.			
I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason: Check One <input type="checkbox"/> Purchase for Resale (Complete Section A) <input type="checkbox"/> Exempt Purchase (Complete Section B) <input type="checkbox"/> Contractor (Complete Section C)			
SECTION A — Nebraska Resale Certificate			
Description of Item or Service Purchased _____ I hereby certify that the purchase, lease, or rental of _____ from the above seller is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of our business, either in the form or condition in which purchased, or as an ingredient or component part of other property to be resold. I further certify that we are engaged in business as a: <input type="checkbox"/> Wholesaler <input type="checkbox"/> Retailer <input type="checkbox"/> Manufacturer <input type="checkbox"/> Lessor of _____ Description of Product Sold, Leased, or Rented _____			
and hold Nebraska Sales Tax Permit Number 01- _____		If None, State Reason _____	
or Foreign State Sales Tax Number _____		State _____	
SECTION B — Nebraska Exempt Sale Certificate			
The basis for this exemption is exemption category _____ (Insert appropriate category as described on reverse of this form.) If exemption category 2 or 5 is claimed, enter the following information: Description of Item(s) Purchased _____ Intended Use of Item(s) Purchased _____			
If exemption categories 3 or 4 are claimed, enter the Nebraska Exemption Certificate number. 05- _____			
If exemption category 6 is claimed, seller must enter the following information and sign this form below: Description of Item(s) Sold _____ Date of Seller's Original Purchase _____ Was Tax Paid when Purchased by Seller? <input type="checkbox"/> YES <input type="checkbox"/> NO Was Item Depreciable? <input type="checkbox"/> YES <input type="checkbox"/> NO			
SECTION C — For Contractors Only			
1. Purchases of Building Materials or Fixtures: <input type="checkbox"/> As an Option 1 or Option 3 contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales or Consumer's Use Tax Permit Number is: 01- _____			
2. Purchases Made Under Purchasing Agent Appointment on behalf of _____ (exempt entity): <input type="checkbox"/> Pursuant to an attached Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, I hereby certify that purchases of building materials, and fixtures are exempt from Nebraska sales tax.			
<small>Any purchaser, or their agent, or other person who completes this certificate for any purchase which is other than for resale, lease, or rental in the regular course of the purchaser's business, or is not otherwise exempted from the sales and use tax under Neb. Rev. Stat. §§77-2701 through 77-27,135, shall in addition to any tax, interest, or penalty otherwise imposed, be subject to a penalty of \$100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. With regard to a blanket certificate, this penalty shall apply to each purchase made during the period the blanket certificate is in effect. Under penalties of law, I declare that I am authorized to sign this certificate, and to the best of my knowledge and belief, it is correct and complete.</small>			
sign here _____ Authorized Signature		_____ Title	_____ Date

5. Contractor Option Transactions (continued)

IMPORTANT CONTRACTOR REMINDER!

Building materials **DO NOT INCLUDE** tools, equipment, or services that do not become annexed to real estate.

Contractors **MUST PAY SALES OR USE TAX** on purchases of these items!

5. Contractor Option Transactions (continued)

- Use tax is due when an **Option 2** contractor purchases:
 - Building materials or fixtures picked up in another state
 - Building materials or fixtures delivered to the job site by a supplier who does not charge sales tax
- Use tax is due when on an **Option 3** contractor withdraws building materials and fixtures out of inventory.
- Use tax is due when **ANY** contractor withdraws **tax-free inventory** for business or personal use.
 - Dry wall contractor repairs his own home
 - Plumbing contractor installs a new faucet in the office restroom

5. Contractor Option Transactions (continued)

Landscapers

- **Retail Sales**
 - Live plants including sod
 - Labor charges to plant them
 - Pest control services (ex. grub control)
- **Contractor Labor**
 - Building or repairing retaining walls
 - Adding dirt for berms, or fountains in ponds
 - Installing and repairing underground sprinkler systems
- **Nontaxable Services**
 - Lawn mowing, fertilizing, or snow removal

5. Contractor Option Transactions (continued)

Building Cleaning & Pest Control Services

- These services are NOT “contractor labor” (even when performed at the construction site).
- Contractors **MUST PAY SALES TAX** on purchases of these services, even if the project owner is an exempt entity.

Example: Termite treatment, or a 3rd party crew hired to clean up inside a building.

6.

Contracts With Exempt Entities

6. Contracts with Exempt Entities

- How do I know if the project owner is an exempt entity?
 - [Governmental Entity information guide](#) ([Req-1-093](#))
 - [Nonprofit information guide](#) ([Req-1-090](#))
 - Nonprofit Healthcare Facilities ([Req-1-090](#))
 - [Contact the Department](#)
- **REMINDER:**
NOT ALL nonprofits or governmental units are exempt from sales tax!

6. Contracts with Exempt Entities (continued)

Be sure to get a
Purchasing Agent Appointment and
Delegation of Authority for
Sales and Use Tax, [Form 17](#).

Form 17 supports why tax was not paid or collected
on building materials and fixtures for
construction projects for exempt entities.

6. Contracts with Exempt Entities (continued)

OPTION 1 PRIME CONTRACTORS

- Receive [Form 17](#) and [Form 13](#) from project owner **PRIOR TO** the start of the project.
- Complete the Delegation of Prime Contractor's Authority portion of the Form 17.
- Complete a Form 13 and provide it with a copy of the Form 17 to Option 1 subcontractors.
- Provide copies of the Form 17 to any Option 2 or 3 subcontractors on the project so they can buy building materials and fixtures sales tax exempt.

6. Contracts with Exempt Entities (continued)

OPTION 2 & 3 PRIME CONTRACTORS

- Complete a [Form 13](#) and provide it with a copy of the [Form 17](#) to Option 1 subcontractors.
- Provide copies of the Form 17 to any Option 2 or 3 subcontractors on the project so they can buy building materials and fixtures sales tax exempt.



Purchasing Agent Appointment
and Delegation of Authority for Sales and Use Tax

FORM
17

PURCHASING AGENT APPOINTMENT	
Name and Address of Prime Contractor	Name and Address of Governmental Unit or Exempt Organization
Name	Name
Street or Other Mailing Address	Street or Other Mailing Address
City State Zip Code	City State Zip Code
Name and Location of Project	Appointment Information
Name	Effective Date (see Instructions)
Street or Other Mailing Address	Expiration Date
City State Zip Code	Nebraska Exemption Number (Exempt Organizations Only)

Identify Project

The undersigned governmental unit or exempt organization appoints the above-named contractor and the contractor's delegated subcontractors as its agent to purchase and pay for building materials that will be annexed to real estate by them into the tax exempt construction project stated above.

sign
here

Authorized Signature of Governmental Unit or Exempt Organization

Title

Date

DELEGATION OF PRIME CONTRACTOR'S AUTHORITY	
Name and Address of Subcontractor	Delegation Information
Name	Effective Date
Street or Other Mailing Address	Expiration Date
City State Zip Code	Portion of Project

The undersigned prime contractor hereby delegates authority to act as the purchasing agent of the named governmental unit or exempt organization to the above-named subcontractor.

sign
here

Signature of Prime Contractor or Authorized Representative

Title

Date

6. Contracts with Exempt Entities (continued)

OPTION 1 SUBCONTRACTORS

- Purchase building materials & fixtures sales tax exempt by giving [Form 13](#), Section C, Block 1 to their Nebraska supplier.
- **DO NOT** collect sales tax on items when they obtain a properly completed [Form 17](#) & [Form 13](#) **PRIOR TO** the start of the project.

6. Contracts with Exempt Entities (continued)

OPTION 2 SUBCONTRACTORS

- Purchase building materials & fixtures sales tax exempt by giving –
 - A copy of [Form 17](#)
and
 - [Form 13](#), Section C, Block 2
to their Nebraska supplier.

6. Contracts with Exempt Entities (continued)

OPTION 3 SUBCONTRACTORS

- Purchase building materials & fixtures sales tax exempt by giving [Form 13](#), Section C, Block 1 to their Nebraska supplier.
- **DO NOT** owe use tax on items when they obtain a properly completed [Form 17](#) **PRIOR TO** the start of the project.

6. Contracts with Exempt Entities (continued)

FORM 17 FOR ALL CONTRACTORS

- **ONLY** building materials and fixtures that become annexed to real estate may be purchased sales tax exempt.
- Contractors **MUST** pay sales or use tax on all purchases or rentals of equipment, tools, and taxable services used to complete the project.

6. Contracts with Exempt Entities (continued)

REFUNDS ON SALES AND USE TAXES PAID ON EXEMPT PROJECTS

- If a Form 17 **IS** issued to the contractor prior to the contractor annexing building materials, the **contractor** can request a refund.
- If a Form 17 is **NOT** issued to the contractor in a timely manner, **ONLY the project owner** can request a refund.
- The following are **NOT ALLOWED** a refund:
 - United States Government;
 - Nebraska University; and
 - Nebraska State College;
 - State of Nebraska.

6. Contracts with Exempt Entities (continued)

ROUTINE, ON-CALL REPAIRS FOR EXEMPT ENTITIES

Contractors who are on-call for exempt entities may obtain a [Form 17](#) for routine, on-call repair.

- There must be a written agreement.
- Form 17 is good for up to one year.
- Option 1 contractors must also obtain a [Form 13](#).

7.

Building Materials & Fixtures for a Job Site Outside Nebraska

7. Job Site Outside Nebraska

OPTION 1

NO NE SALES OR USE TAX LIABILITY

- When withdrawing building materials and fixtures from tax-free inventory
- When building materials and fixtures are annexed to real estate in the other state.

7. Job Site Outside NE (continued)

OPTION 2

NO NE SALES TAX CREDIT OR REFUND

- When withdrawing building materials and fixtures from tax-paid inventory.
- Credit for sales tax paid may be available from the other state.
- They may have the supplier deliver materials to the job site out-of-state and pay no Nebraska sales or use tax.

7. Job Site Outside NE (continued)

OPTION 3

REMITTS USE TAX TO NEBRASKA

- When withdrawing building materials and fixtures from tax-free inventory.
- At the rate in effect at the time and place inventory is withdrawn.
- They may have the supplier deliver materials to the job site out-of- state and pay no Nebraska use tax.

8.

Repair or Annexation of Exempt Manufacturing Machinery & Equipment (MME)

8. MME



- When work on MME involves charges for contractor labor:
 - Contractor labor is sales tax exempt; and
 - The contractor Option chosen determines the taxability of purchases of MME, or any repair parts.

8. MME (continued)



OPTION 1

- Obtains Form 13, Section B, Category 5 from the manufacturer.
- May purchase MME sales tax exempt.
- **DOES NOT** collect sales tax on MME, **PROVIDED** a completed Form 13 is received from the manufacturer.

8. MME (continued)

Form 13, Section B

Nebraska Department of REVENUE		Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption <small>• Read instructions on reverse side/see note below</small>		FORM 13	
NAME AND MAILING ADDRESS OF PURCHASER			NAME AND MAILING ADDRESS OF SELLER		
Name			Name		
Street or Other Mailing Address			Street or Other Mailing Address		
City		State	Zip Code	City	
				State	
				Zip Code	
Check Type of Certificate					
<input type="checkbox"/> Single Purchase <input type="checkbox"/> Blanket If blanket is checked, this certificate is valid until revoked in writing by the purchaser.					
I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:					
Check One <input type="checkbox"/> Purchase for Resale (Complete Section A) <input type="checkbox"/> Exempt Purchase (Complete Section B) <input type="checkbox"/> Contractor (Complete Section C)					
SECTION A—Nebraska Resale Certificate					
Description of Item or Service Purchased					
I hereby certify that the purchase, lease, or rental of _____ from the above seller is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of our business, either in the form or condition in which purchased, or as an ingredient or component part of other property to be resold.					
I further certify that we are engaged in business as a: <input type="checkbox"/> Wholesaler <input type="checkbox"/> Retailer <input type="checkbox"/> Manufacturer <input type="checkbox"/> Lessor					
of _____ Description of Product Sold, Leased, or Rented					
and hold Nebraska Sales Tax Permit Number 01- _____ If None, State Reason					
or Foreign State Sales Tax Number _____ State _____					
SECTION B—Nebraska Exempt Sale Certificate					
The basis for this exemption is exemption category _____ (Insert appropriate category as described on reverse of this form.)					
If exemption category 2 or 5 is claimed, enter the following information:					
Description of Item(s) Purchased			Intended Use of Item(s) Purchased		
If exemption categories 3 or 4 are claimed, enter the Nebraska Exemption Certificate number. 05- _____					
If exemption category 6 is claimed, seller must enter the following information and sign this form below:					
Description of Item(s) Sold		Date of Seller's Original Purchase		Was Tax Paid when Purchased by Seller?	
				<input type="checkbox"/> YES <input type="checkbox"/> NO	
				<input type="checkbox"/> YES <input type="checkbox"/> NO	
SECTION C—For Contractors Only					
1. Purchases of Building Materials or Fixtures:					
<input type="checkbox"/> As an Option 1 or Option 3 contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales or Consumer's Use Tax Permit Number is: 01- _____					
2. Purchases Made Under Purchasing Agent Appointment on behalf of _____ (exempt entity):					
<input type="checkbox"/> Pursuant to an attached Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, I hereby certify that purchases of building materials, and fixtures are exempt from Nebraska sales tax.					
<small>Any purchaser, or their agent, or other person who completes this certificate for any purchase which is other than for resale, lease, or rental in the regular course of the purchaser's business, or is not otherwise exempted from the sales and use tax under Neb. Rev. Stat. §§77-2701 through 77-27,135, shall in addition to any tax, interest, or penalty otherwise imposed, be subject to a penalty of \$100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. With regard to a blanket certificate, this penalty shall apply to each purchase made during the period the blanket certificate is in effect. Under penalties of law, I declare that I am authorized to sign this certificate, and to the best of my knowledge and belief, it is correct and complete.</small>					
sign here		_____		_____	
Authorized Signature		Title		Date	

8. MME (continued)



OPTIONS 2 & 3

- These contractors owe sales or use tax on MME and on parts purchased and annexed to manufacturer's real estate.
- **CANNOT** accept a Form 13, Section B, Category 5 from the manufacturer.
- But, a manufacturer can purchase MME sales tax exempt directly from a 3rd party vendor.

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Let us know what you think.
Please turn in your evaluation!

THANK YOU!

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[number]

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